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From: maxharris2@cox.net [mailto:maxharris2@cox.net]

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To: ATR-Real Estate Workshop

Cc: FTCDOJworkshop@realtors.org

Subject: Competition and the Real Estate Workshop -- Comment, Project No. V050015

Attachment is a letter to:

Competition and the Real Estate Workshop -- Comment, Project No. V050015

Document is prepared in MicroSoft Word

By:

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Antitrust Division

U.S. Department of Justice

Liberty Place, Suite 300

Attention: Lee Quinn

325 7<sup>th</sup> Street, NW

Washington, DC 29530

Ladies and Gentlemen:

I am a REALTOR® with approximately twenty years of experience in selling real estate in the Southern California market place.

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I find it interesting that the Department of Justice and the Federal Trade Commission feel it is necessary to investigate the real estate industry to determine if there is a restriction of trade or maybe, some anti-competitiveness going on.

Nothing could be further from the truth.

The real estate industry is a model of competition that works. In an economy in which large, national corporations such as Wal-Mart and Microsoft dominate the marketplace, real estate stands apart. We are an industry made up predominantly of small businesses and independent contractors who represent the entrepreneurial spirit this country was founded on.

All of us serve localized markets where we compete for business every day. Fierce competition is fueled largely by the uniquely intense and personalized nature of the service we provide to our clients which in turn, determines our future success through referrals and return or repeat business.

Barriers to entry into the real estate business are low and probably should be raised and I personally would like to see some type of journeyman program established to allow new agents an opportunity to learn the business before being put in the position of working with clients and other real estate agents. This would probably reduce the high turn over rate of new agents which occurs on an annual basis. But, if you are willing to take the time to learn the business in your local market, pass the state license examination and adhere to the REALTOR® code of ethics, there is nothing to stand in the way of success in this industry. I had to learn the business and pass the state licensing examination, but it is my own work ethic, commitment to professional standards and dedication to client satisfaction that determine my success.

Even through the economic downturns our country has experienced in the past few years, our industry has continued to provide opportunity – a chance as some would say for betterment of someone's economic stability. Something I would say is confirmed by the thousands of new agents that do join our profession every year and the over 2 million Americans who are now licensed to provide professional real estate services in communities across this country. This includes lenders, appraisers and all the other professionals that form our industry.

Nothing encourages a competitive business environment more than providing consumers with choice. And, in the residential real estate marketplace, consumers not only are able to choose from more than 76,000 brokerage firms and more than 1.2 million REALTORS®, but also from a variety of business models.

Some of these business models provide absolutely no service to a client except to minimally take about 45 minutes to an hour to input the clients home particulars into the multiple listing service

and there also are firms which just provide the client with a package of materials for them to read and act upon how ever they wish and then have the audacity to charge anywhere from \$400 to \$1500 for their time. These are the "minimum service provider" brokers.

They claim the client has the right to handle their own real estate transaction how ever they want. And, of course they do.....

And, we as REALTORS® have to deal with them all the time. Having to straighten out the mess the clients get into by not knowing "...what, who, where, when and why?" And, do you know the worst part? Some REALTOR® who has a buyer who wants to make an offer on this person's property will wind up usually handling both sides of the entire transaction with out compensation for his/her work.

Then, there are the "full service professionals." These are the REALTORS® who work diligently with their clients, buyers or sellers, keeping them informed and advising them through out the complete transaction. Helping them complete all the paperwork; which if you haven't seen a completed transaction folder is enough paper to choke a horse figuratively. Working with title and escrow; home inspectors and home inspection reports, helping the seller or buyer regarding what repairs to ask for or what work will be done; arranging for termite inspections and completion of termite work and or repair; and all the other myriad incessant details required to keep the transaction on tract and on time. And, they handle all this hoping that nothing will go wrong and the escrow will close and then they will get paid for their work. There are times when something fails and, God forbid, escrow does not close and everything was all for naught.

The listing agent should always be responsible for handling and advising the seller through out the entire transaction. If you wish to make changes in real estate, this is the place to start. Make it mandatory that a listing agent always has full fiduciary duty to his/her client and is responsible for certain ground rules when taking a listing from a client. Is the seller being looked after in a minimum service contract situation? The buyer's realtor agent will always have a fiduciary duty to his/her buyer and in this situation .... not the seller. The seller becomes responsible and liable for their own end of the transaction with no licensed person to aid and abet.

Why do you think REALTORS® spend so much time taking continuing education courses? Is it because they like to put a lot of initials behind their names? Possibly, but it also helps to know that these REALTORS® have taken the time to learn and stay abreast of what's happening in their field of endeavor. And, clients know that they have the experience and where with-all to do the job required and expected of them.

Another area which I understand that you have determined requires investigation is the Multiple Listing Services which a REALTOR® relies upon to promote their listings and find properties which their buyers might be interesting in pursuing.

The MLS is a cooperative, broker-to-broker offer of cooperation and compensation that help both brokers and customers buy and sell homes. It is not a public utility, nor should it be.

The beauty of the MLS is that it allows real estate brokerages of every size to compete on a level playing field. It gives all of us access to an inventory of property listings that we are able to show and sell to our clients.

The MLS doesn't discriminate. All MLS members are treated equally, regardless of their size or their business model, and yet the rights of property owners and their listing brokers are respected. The rules of the MLS achieve a delicate balance between respecting the rights of listing brokers so they will continue to be willing to contribute their inventory of listings and permitting cooperating brokers the ability to show those listings and be assured of receiving compensation if they bring about a successful sale.

Now, the definition of a real estate broker is someone who works with a client to list or sell real estate property. There is nothing in that definition which says that someone can establish a “business model” which trades off a brokers listings to obtain buyers for those listings for the sole purpose of selling them back to the brokers to make a profit.

So, when someone presents a “business model” for a company which really has no product except someone else’s that they want to sell back to the true owner, I consider that at least the establishment of an unfair business practice and I have a problem with the ethic’s involved.

It was recently pointed out to me that I should remember there was a time real estate brokers were only in what is called brick and mortar locations close to each other. They would have brochures in their windows showing the properties they had listed for sale. None would have a brochure of the other’s listing. Why? Because in many states it is against the law to advertise another’s listings if one has not obtained permission from the listing broker. The listings are the sole property of the listing broker. That’s why the multiple listing services (MLS) was designed as a co-operative to allow all co-operating brokers to share in the selling of each others listings.

If the D.O.J. and F.T.C. continue to persist in there unnecessary actions, the real estate brokerage industry will probably be put into a situation which will preclude any electronic listing activity which will then completely undermine the application of selling real estate as we now know it.

Respectfully,

Maxwell S. Harris, GRI, e-Pro  
Realtor